

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ASHLEIGH MASON, et al.,

Plaintiffs,

**MEMORANDUM
AND ORDER**

-against-

17-CV-4780 (MKB)

LUMBER LIQUIDATORS, INC.,

Defendant.

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ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

In connection with defendant’s motion to dismiss the claims of certain opt-in plaintiffs in this FLSA action, on account of a settlement in a California state class action, Kramer v. Lumber Liquidators, Case No. 34-2017-00222434-CU-OE-GDS (Superior Ct. of California), this Court directed that the parties “file a joint-letter describing whether the Kramer court was advised of the instant FLSA action, and supply any relevant portions of plaintiffs’ motions for preliminary and final approval of the settlement” Electronic Scheduling Order (Nov. 4, 2020). In response, the parties filed a joint letter setting forth each party’s position, and each party submitted a declaration from counsel, attaching various documents from the docket in Kramer. See [Joint] Letter (Nov. 10, 2020), DE #212.

Later that day, plaintiffs moved to strike defendant’s portion of the joint letter and defendant’s counsel’s declaration, see Motion to Strike (Nov. 10, 2020), DE #213, followed by a letter “clarify[ing] certain representations made in Plaintiffs’ Opposition” to defendant’s motion to dismiss, see Letter to [] Judge Mann (Nov. 10, 2020), DE #214. Defendant

thereafter docketed a letter opposing plaintiffs' motion to strike and requesting that plaintiffs' "clarify[ing] letter" be stricken. See Response in Opposition (Nov. 15, 2020), DE #215.

The parties' tit-for-tat submissions did not end there: defendant then moved for sanctions and to seal a declaration attached to plaintiffs' motion to strike, on the ground that the declaration intentionally disclosed privileged mediation and settlement communications. See Motion to Seal Document (Nov. 17, 2020), DE #216. In response, plaintiffs do not oppose defendant's request to seal the challenged declaration, but they persist in seeking to draw this Court into the parties' settlement negotiations in Kramer, as well as counsel's email communications in connection with the latest flurry of filings in the instant case. See Response in Opposition (Nov. 18, 2020), DE #217.

The Court admonishes counsel on both sides of this action for using the Court's narrow request for documents and documented facts in the Kramer case as a justification to reopen the arguments advanced on a dispositive motion that was fully briefed and submitted three months ago. The Court did not seek or authorize, and will not consider, the parties' unresponsive and argumentative conflicting accounts of the mediation process and communications between counsel preceding the class settlement in Kramer. Therefore, in addressing defendant's pending motion to dismiss, the Court will disregard and deem stricken the following portions of the parties' recent filings: defendant's portion of the parties' joint letter of November 10, 2020 (DE #212 at 3-4), beyond the first paragraph; paragraphs 2 through 5 and 10 of the

Declaration of Karin M. Cogbill (DE #212-5)¹; the Declaration of Dominic Messiha (DE #213-1), attached to plaintiffs’ motion to strike; plaintiffs’ November 10th “clarifying” letter (DE #214); defendant’s November 15th response to that letter (DE #215); Section A and Exhibit A to defendant’s November 17th letter (DE #216 and #216-1); and plaintiffs’ November 18th letter and attachment thereto (DE #217 and #217-1). The Court declines to impose sanctions and warns both sides that it will not tolerate their continued efforts to expand the record on a motion that has now been fully submitted. The Clerk is respectfully requested to seal the Messiha Declaration (DE #213-1).

SO ORDERED.

**Dated: Brooklyn, New York
November 24, 2020**

/s/ *Roanne L. Mann*

**ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE**

¹ Plaintiffs have not requested that the attachments to the Cogbill Declaration be stricken.